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Delivered: By E-mail

Dear [REDACTED],

CALL FOR FEEDBACK: SIR PATRICK VALLANCE REVIEW

I am writing on behalf of our Privacy and Data team in response to your call for feedback for submission as part of the Sir Patrick Vallance Review.

We propose three priority areas for regulatory or legislative change in the digital sector, as follows:

Regulatory or legislative change	Introduction of a new certification or similar process for established cloud services companies (e.g. Oracle, Salesforce, Microsoft, Google, SAP, Adobe, AWS, Rackspace etc.) on which SMEs can rely as an alternative to completing a transfer risk assessment (TRA) every time.
Change required	Current proposals for UK transfer risk assessment involve complex tools which need to be considered and completed in many procurement situations where the appreciable risk is in fact very low, or where in practice there is little alternative for SMEs. We suggest a form of pre-approval, certification or registration endorsed by the Information Commissioner for commonly used cloud services by SMEs, which, in effect, allows them to rely on the transfer risk assessments and other measures of the service providers who will be better placed and better resourced to assess the safety of transfers to nonadequate third countries. This is also consistent with the practice of non-negotiable data processing agreements used by such service providers.
Sectoral impact	Reduction in compliance burdens and regulatory risk for SMEs.
Economic value	Potentially significant. A 2022 estimate cited in Tech Monitor suggests that GDPR compliance impacts profit directly (with a reduction of as much as 8%), with disproportionate impact on SMEs and a consequent chilling impact on competition.

RESPONSE TO SPV REVIEW 160123.DOCX \ 16.01.2023

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Certificate No. FS 31466

Regulatory or legislative change	Taking control of the impact of guidance and case law on cookie consent and data processing for personalised content and ads. This has been made more urgent by the recent Meta decision by the EDPB (under the EU GDPR, but bound to affect UK business). Ever more complex requirements for the purposes of transparency at the cost of comprehensibility makes users unable to make informed choices about the use of their data in targeted advertising, not more and could lead to anti-competitive outcomes.
Change required	A regulatory sandbox operated specifically to encourage and support tool providers and the industry to solve these issues, together with associated change in guidance that recognises and addresses the issues with the status quo.
Sectoral impact	Regulatory certainty, simplification, and reduced cost for business. Increased confidence and reduced time wasting for millions of users in the UK.
Economic value	Making tools that are user-focussed and open to everyone, including SMEs, will allow for a level playing field that is fair for all market participants. Stopping users having to tailor cookie preferences on every website will improve the user experience and increase the productivity of every internet user visiting a website in the UK.
Regulatory or legislative change	Following a recent change, current ICO practice is to publish data sets including self-reported data breaches and data protection complaints including for incidents and complaints which in due course are confirmed as involving no breach of security or law. We fear this will have a chilling effect on regulator engagement, contrary to stated ICO objectives, and that it may cause difficulty for businesses engaged in public procurement who have to declare data breaches as part of the tender process. It may also lead to unwarranted public targeting of business, with consumer-facing businesses suffering a disproportionate burden.
Change required	Increased engagement with regulated businesses by the Information Commissioner about publication, together with clarification of ICO policy on publication, and consideration of whether anonymised statistical information only would be of equal public benefit without deterring businesses from valuable regulator engagement.
Sectoral impact	Increased regulatory confidence. A change would bring the ICO in line with the policy of other regulators (for example HMRC, HSE, CMA) which only publish incidents leading to formal regulatory action.
Economic value	A change in practice will remove new reputational considerations from the decision to report security breaches and prevent complainants from using public censure as leverage in relation to unfounded or vexatious complaints (all of which would have an adverse impact on an organisation's resources and costs).

Yours faithfully

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